IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:06CV332-01-MU

| MARCO ANTONIO CRUZ, |) |
|----------------------------|---------------------|
| Plaintiff, |) |
| v. |)) <u>ORDER</u> |
| JOHN DOE , <u>et al.</u> , |) |
| Defendants. |) |
| |) |

THIS MATTER comes before the Court upon Plaintiff's Motion to Reconsider, filed November 2, 2006.

On August 3, 2006, Plaintiff filed a Complaint alleging deliberate indifference to a serious medical need for failure to properly treat his stomach ulcer. On September 12, 2006, this Court dismissed Plaintiff's Complaint without prejudice when he failed to respond to this Court's order regarding exhaustion. Plaintiff has now filed a motion stating that because he was transferred he did not receive the exhaustion order in a timely manner. Furthermore, Plaintiff asserts that he has exhausted his claim and he can provide the Court the copies of his grievances.

This Court need not determine if the circumstances presented by Plaintiff are sufficient to warrant a granting of his Motion to Reconsider. A review of this Court's files reveals that Plaintiff filed a Complaint containing the same claim against Defendant Preston in 2004 (3:04cv373). This case was dismissed for failure to state a claim. The principle of res judicate operates to bar further claims by parties or their privies based on the same cause of action that has been previously adjudicated on the merits. See Young-Henderson v. Spartanburg Area Mental Health Ctr., 945 F.2d

IT IS THEREFORE ORDERED THAT Plaintiff's Motion to Reconsider is **DENIED**.

Signed: January 8, 2007

Graham C. Mullen

United States District Judge